



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 855/2017\*, \*\*

<i>Communication submitted by:</i>	Susith Wasitha Ranawaka (represented by counsel, Michaela Byers)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	20 November 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 30 November 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	5 December 2019
<i>Subject matter:</i>	Risk of torture in the event of deportation to country of origin (non-refoulement); prevention of torture
<i>Procedural issue:</i>	Admissibility – manifestly ill-founded
<i>Substantive issue:</i>	Deportation of the complainant to Sri Lanka
<i>Articles of the Convention:</i>	3 and 22

1. The complainant is Susith Wasitha Ranawaka, a national of Sri Lanka born on 16 September 1977. He was born in Matara, Southern Province, and is of Sinhalese ethnicity and Buddhist faith. His asylum application in Australia was rejected, and he is subject to a deportation order to Sri Lanka. He claims to face a risk of torture upon return to Sri Lanka, in violation of article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 28 January 1993. The complainant is represented by counsel.

#### The facts as submitted by the complainant

2.1 From 2003 to 2012, he worked in factory management for the Henegama Akuressa Tea Cooperative in Sri Lanka. His uncle, Bandu Ranawaka, had influence in the cooperatives, as he was a Chairperson of the National Cooperative Development Board and the National Cooperative Council. The complainant, his father and his uncle, Bandu had been militants of the Sri Lankan Freedom Party. By 2004, the Sri Lankan Freedom Party

\* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



had formed a coalition with several small parties, called the United People's Freedom Alliance. The complainant had participated in various activities of the Alliance.

2.2 By the time the 2010 parliamentary election took place, the complainant had become disaffected with the President of Sri Lanka and switched allegiance to the United National Party. During the election campaign in 2010, the complainant was shot at by unidentified people, presumably supporters of the United People's Freedom Alliance. He also received death threats in the factory premises. During the election campaign, he was abducted and beaten by supporters of the Alliance, who pressured him to return to it. He attempted to complain to the police but was told to stop disgracing the Government. He continued to be harassed, including by receiving a phone call from the Deputy Minister for Public Administration, Dahanayake, and being suspended from work. Even after his departure from Sri Lanka, his wife informed him that officers of the Criminal Investigation Department had visited and inquired about his whereabouts.

2.3 The complainant arrived on Christmas Island, Australia, by boat on 11 April 2012. In June 2012, he applied for a protection visa. The delegate of the Minister for Immigration and Border Protection of Australia refused his application on 1 October 2012. He sought a review of that decision before the Refugee Review Tribunal, which upheld the original refusal on 22 February 2013. On 22 March 2013, he appealed that decision to the Federal Circuit Court, which remitted the matter back to the Refugee Review Tribunal. On 19 August 2014, the Tribunal upheld the delegate's original refusal again. On 17 September 2014, the complainant sought a judicial review of that decision before the Federal Circuit Court. His application was dismissed on 23 September 2016. On 26 October 2016, he appealed the decision before the Federal Court, which dismissed the application on 31 March 2017. His request for special leave to appeal in the High Court was rejected on 12 October 2017. On 8 November 2017, he requested the Minister for Immigration and Border Protection to intervene, but his request was refused on 9 November 2017. The complainant claims to have exhausted all available domestic remedies.

2.4 The complainant submits that, after the second hearing at the Refugee Review Tribunal, his mother informed him that a complaint had been filed against him by Dahanayake, the Deputy Minister of Public Administration. His uncle, Bandu, called and told him not to worry and said that the complaint would dissipate of its own accord, given the absence of the complainant. In August 2014, after the Refugee Review Tribunal issued its second decision, the complainant obtained a copy of the complaint filed by Dahanayake, in which he had been accused of misuse of the tea cooperative's vehicles for political activities and of destruction of factory machinery. The complainant states that his conflict with Dahanayake dated back to 2009 when his uncle and Dahanayake became political rivals and ran for the United People's Freedom Alliance candidacy for a provincial council. Even after Dahanayake won the election, the political rivalry continued.

2.5 In the light of this new evidence and in the context of speculation with respect to the Alliance's precise motives for targeting him, the complainant believes that he himself was not the primary target of the attacks, but rather his uncle, Bandu. Dahanayake wished not only to neutralize the complainant's uncle, Bandu as a political force, but also to humiliate him. Dahanayake has made a series of attacks against Bandu, one of which was to attack Bandu's nephew and collaborator in his political career, who was weaker than Bandu. Although Bandu was able to escape a hostile campaign against him, he was weakened and less capable of protecting his nephew.

### **The complaint**

3.1 The complainant claims that his deportation to Sri Lanka would constitute a violation of his rights under article 3 of the Convention. He contends that there are substantial grounds for believing that his uncle's political rival, the Deputy Minister for Public Administration, would seek to harm him as a means of harming his uncle. The complaint brought by Dahanayake against the complainant demonstrates such intention. As the Penal Code of Sri Lanka criminalizes destruction of government property, the complainant claims to face a real risk of imprisonment if returned to Sri Lanka. He also asserts that, owing to the poor conditions of detention in Sri Lanka, any prolonged

detention can in and of itself constitute inhumane treatment,<sup>1</sup> and further asserts that he is at a heightened risk of being subjected to torture either as an instrument of interrogation or as ordered by Dahanayake. He submits that assaults against detainees are not only routine, but also standardized in Sri Lanka.

3.2 The complainant also claims a risk of harm as a failed asylum seeker. Because he was the only Sinhalese on the boat where 98 other Tamils were on board, the Sri Lankan authorities would suspect him of having aided sympathizers of the Liberation Tigers of Tamil Eelam to flee the country.

3.3 The complainant also brings several claims concerning the second hearing and decision of the Refugee Review Tribunal. First, he contends that the Tribunal erred in dismissing his concern about confidentiality, although he did not trust that the Australian authorities would not reveal to Sri Lankan authorities information damaging to him. When asked about this matter by the Tribunal, he could not answer, as he believed that doing so would be an act of defiance. Second, the Tribunal failed to consider other possible motivations of the United People's Freedom Alliance, such as revenge, for their harassment of the complainant. Lastly, the Tribunal erred in finding that Bandu, being a politically influential figure in the Alliance, could protect the complainant. Although the Tribunal referred to a 2013 report of the Asian Human Rights Commission indicating that Bandu had assaulted people with impunity to find that he was influential enough to avoid accountability, the complainant argues that this rather suggests that Bandu's standing in the Alliance was weakening and that he had become vulnerable to such accusations concocted by a more powerful member of the Alliance. The Tribunal also erred in rejecting his application based on his political inactivity in Australia, as this reasoning does not take into account the fact that the Alliance's will to harm him does not depend on his current political activity, but rather on his connection and past political association with his uncle.

#### **State party's observations on admissibility and the merits**

4.1 On 30 May 2018, the State party submitted its observations on the admissibility and merits of the communication, stating that the complainant's claims are inadmissible *ratione materiae* and as manifestly unfounded. However, should the Committee consider the complainant's allegations admissible, they should be dismissed as being without merit.

4.2 The State party contends that a number of the complainant's claims regarding the risk of harm upon his return to Sri Lanka do not amount to torture within the meaning of article 3 of the Convention. His allegations that he would be targeted by the United People's Freedom Alliance through harassment, court proceedings and a political campaign to damage his uncle are inadmissible *ratione materiae*, as the obligation of non-refoulement under article 3 of the Convention is confined to circumstances in which there are substantial grounds for believing that the returnee would be in danger of being subjected to torture. The State party further submits that the Committee has maintained a distinction between torture and treatment that does not meet that threshold, including cruel, inhuman or degrading treatment or punishment, for the purposes of determining whether article 3 is engaged. It therefore considers that the complainant's claims regarding the court action allegedly instituted against him and attempts to undermine the political career of his uncle do not meet this threshold and therefore do not engage its non-refoulement obligations under article 3.

4.3 The State party also submits that the complainant's claims are inadmissible for being manifestly unfounded under rule 113, subparagraph (b), of the Committee's rules of procedure, as he has failed to establish a *prima facie* case for the purpose of admissibility. His claims have been thoroughly considered in a series of domestic proceedings and found not to engage the State party's non-refoulement obligations under the Convention or under the International Covenant on Civil and Political Rights. Robust domestic processes have considered the claims and determined that they are not credible. Furthermore, the complainant has not provided any new information in his communication to the Committee. The State party refers to paragraph 9 of the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, in which the

<sup>1</sup> See International Truth and Justice Project Sri Lanka, "Unstopped: 2016/17 Torture in Sri Lanka" (July 2017).

Committee states that, as it is not an appellate or a quasi-judicial body, it gives considerable weight to findings of fact that are made by organs of a State party.<sup>2</sup>

4.4 The State party notes that a transparent and reasoned consideration of the admissibility of a complainant's claims is a key procedural element of the individual complaints process and essential to the success of the complaints framework. The State party further notes that in certain recent views adopted by the Committee, in response to the State party's detailed submissions that the complainants' claims were inadmissible *ratione materiae* or manifestly unfounded, the Committee observed that the issues raised with regard to admissibility were closely related to the merits. The State party notes that it is necessary for the Committee to consider and determine the State party's submissions, as required under the rules of procedure, that complaints raising allegations that clearly do not fall within the definition of torture in article 1 of the Convention, or that are manifestly unfounded, are inadmissible. On this basis, the State party requests that the Committee specifically consider and respond to the arguments made by the State party with regard to the admissibility of the complaint. The State party further submits that, should the Committee find the communication admissible, the complainant's claims are without merit.

4.5 The State party recalls that the delegate of the Minister for Immigration and Border Protection of Australia refused the complainant's application for a protection visa on 1 October 2012. The delegate did not accept several of his claims, including that the United People's Freedom Alliance would be pleading for his return after he left the party and that he had been detained by the Alliance. While accepting that he might have been involved with the Alliance and might have encountered some issues if he had genuinely shifted his support to an opposing party, the delegate did not accept that he had a significant political profile that would warrant ongoing adverse interest in him. The delegate also took note of the significant lapse of time since his shift in political allegiance as well as the absence of any adverse action taken against him. The delegate further found that the complainant, being a Sinhalese Buddhist, was not a person whom the authorities would target upon his return to Sri Lanka, and that although he might be subjected to routine questioning upon arrival, such questioning would not amount to a real risk of serious harm.

4.6 The State party submits that in upholding the original refusal, the Tribunal found that the complainant's significant confusion regarding political allegiances revealed his ignorance about the parties he had allegedly supported. Despite his claim to have been a youth leader in his community, when questioned about how his followers responded to his change in political allegiance, the complainant appeared to have not given any particular thought to such a question. In its second decision after the Federal Court's remittal of the case, the Tribunal noted that the complainant had remained in Sri Lanka for over two years after he allegedly became the subject of the United People's Freedom Alliance's ill will. The Tribunal also noted that no attempt had been made to arrest or seriously harm him even though country information indicated that the Alliance had frequently arrested and imprisoned individuals for political reasons during 2011. The Tribunal also found that he had been politically inactive while in Australia; that the Alliance remained the ruling coalition and would have no need for the complainant's support; and that he had presented no evidence of threats towards him from Dahanayake.

4.7 The State party further notes that in his request for ministerial intervention of 8 November 2017, the complainant claimed for the first time that his alleged targeting by the Alliance had been part of a campaign to ruin the political career of his uncle. The Department of Immigration and Citizenship decided not to refer the matter to the Minister, as the request did not demonstrate unique or exceptional circumstances.

4.8 The State party notes that, in his request for ministerial intervention and in his communication to the Committee, the complainant has raised several claims concerning the conduct and findings of the Refugee Review Tribunal on remittal (see para. 3.3 above). First, the State party asserts that at the Tribunal's hearing, the complainant could have applied for the Tribunal's power to issue confidentiality orders through his representative, but he did not. The State party submits that, in its second decision, the Tribunal expressly

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<sup>2</sup> Committee against Torture general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 was superseded by general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22 (CAT/C/GC/4), effective from 6 December 2017 (para. 3).

considered the steps taken to protect his confidentiality. The Tribunal also allowed the complainant to provide evidence that had not been presented because of his confidentiality concerns, and consequently, he provided documentary evidence regarding his uncle. The complainant has not claimed that this additional evidence would have changed the Tribunal's decision if it had been presented during the first hearing or that there was more evidence that he had not been able to present to the Tribunal because of his confidentiality concerns. Moreover, he has not presented any evidence demonstrating that the Tribunal breached its obligation under the Migration Act not to publish any statement that might identify an applicant or his or her relatives, or any other confidentiality requirement. Second, contrary to his allegation, the Tribunal explicitly identified retaliation as the likely reason for the Alliance's past harassment of the complainant, and considered it as a potential motivating factor for targeting him. The Tribunal nevertheless found that the prospects of any retaliation being carried out against him in future had been reduced by his lack of political activity since his departure from Sri Lanka. Lastly, the State party maintains that the complainant's alleged risk of harm based on his association with his uncle is not sufficient to establish substantial grounds for believing that he would personally be in danger of being subjected to torture if returned to Sri Lanka.

4.9 As regards the assessment of a personal risk of torture, the State party submits that the existence of a general risk of violence does not constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon return to that country, and the complainant did not establish the existence of additional grounds to show that he was at a foreseeable, real and personal risk of torture if returned to Sri Lanka. The State party reiterates that the issues raised by the complainant, relating to the return of asylum seekers and to human rights violations in Sri Lanka, have been specifically and carefully considered by domestic processes, including against country information provided by the Office of the United Nations High Commissioner for Refugees, non-governmental organizations and foreign affairs ministries of other Governments.<sup>3</sup>

4.10 The State party concludes that the complainant did not provide sufficient evidence indicating that upon return to Sri Lanka, he would be personally at risk of treatment amounting to torture under article 1 of the Convention.

### **Complainant's comments on the State party's observations**

5.1 On 31 March 2019, the complainant provided his comments on the State party's observations on admissibility and the merits of the communication. Contesting the State party's assertion that he has not provided any relevant new information to the Committee, the complainant claims that he provided further evidence of Dahanayake's actions that had not been previously available.

5.2 The complainant alleges that some unidentified people recently attacked his house in Sri Lanka. He also submits that, on 15 April 2018, his uncle Bandu died under suspicious circumstances and that Dahanayake still wishes to carry out revenge and is going to focus more on him.

5.3 As regards the finding by the Australian authorities that he did not have a significant political profile, the complainant claims that those without such a profile may well be at a greater risk. Killing or torturing him is a way of putting significant pressure on his uncle, and it is easier for the opponents to undermine the base support for a politician by harassing his supporters. Claiming that there were problems at the tea factory, the complainant contests the State party's statement that little had happened to him and the authorities had not targeted him. He adds that Sri Lanka continues to be politically unstable.

5.4 As regards the negative credibility finding of his accounts about his political activities, the complainant contends that the shifting nature of Sri Lankan politics confused him about the names and initials of political parties. His political activism was based on his loyalty to particular political figures and his capacity to gather young people, not on his knowledge about political ideas or policies. He claims to be able to discuss the main political actors in the area where he worked without having to trace the initials of the

<sup>3</sup> Including the Department of Foreign Affairs and Trade of Australia; the Border Agency of the United Kingdom of Great Britain and Northern Ireland; the Immigration and Refugee Board of Canada; and the Danish Immigration Service.

shifting political alliances. He asserts that the Australian authorities found him not to be credible because he was not educated in the currency of advanced Western democratic processes.

5.5 As to his confidentiality concern, the complainant submits that at the Refugee Review Tribunal's hearing, he was allowed to speak to his representative only at the end of a demanding, three-hour interview, and he was significantly stressed. Thus, it is not surprising that the confidentiality issue was lost in the moment.

5.6 The complainant reiterates his claim that his personal risk is tied to his relationship and collaboration with his uncle Bandu. He submits that now that Bandu is dead, it may be erroneously deduced that the threat against him has also ceased. Referring to the findings by the Australian authorities that Bandu had protected him, the complainant claims to face a risk of greater harm, as he no longer has Bandu's protection.

#### **Additional information from the complainant**

6. On 4 May 2019, the complainant submitted the death certificate of his uncle, which indicates that poisoning cannot be ruled out as a possible cause of death.

#### **State party's additional observations**

7.1 On 23 August 2019, the State party submitted its observations on the complainant's comments and additional information. The State party asserts that the source of the translation of the newspaper article presented by the complainant is not clear, and the translation has not been certified. In addition, the witness statement has not been taken under oath or affirmation. In the view of the State party, these issues undermine the credibility and reliability of the documents. Even if the statement were credible and reliable, given that the statement acknowledges that an "unknown group" had carried out the alleged vandalism, it cannot be concluded that the act had any link to the complainant's political affiliation. Furthermore, the matter still appears to be under investigation. As a result, the State party considers that this additional information does not alter its original findings.

7.2 The State party further notes that the death certificate lists the deceased as Chandrapala Ranawaka while the complainant's uncle has been referred to as Bandu Ranawaka throughout the domestic proceedings. The different name on the death certificate, of which the name Bandu does not appear to be a variation or nickname, undermines the credibility of the complainant's claims. While the certificate indicates that poisoning could not be ruled out and that the case needed to be forwarded for further investigation, the complainant has not provided any evidence regarding further investigation. The State party considers that his claim to face a risk of greater harm as a result of his uncle's death is misplaced. It logically follows that, if his risk was based on his relationship with his uncle, that risk is exceptionally circumscribed in the light of his uncle's death.

7.3 Regarding the complainant's claims about political instability of Sri Lanka, the State party submits that up-to-date country information has been considered throughout the domestic processes, and country information dated 23 May 2018, prepared by the Department of Foreign Affairs and Trade of Australia, indicates that there is low risk of mistreatment that can amount to torture in Sri Lanka. The State party also provides information as to the procedural steps to be taken for those who return to Sri Lanka.

7.4 The State party takes note of the protection claims raised in the complainant's submission dated 31 March 2019, and maintains that these claims have already been assessed and rejected during the extensive domestic processes. The State party also points out the inconsistencies and lack of credibility of his claims, which have been addressed by various domestic decisions and review mechanisms.

7.5 As regards the complainant's claim that the point about confidentiality was lost in the moment owing to the nature of the proceeding at the Refugee Review Tribunal, the State party reiterates its position that he was given ample opportunity to raise any concerns regarding confidentiality.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground. Therefore, the Committee concludes that it is not precluded by article 22 (5) (b) from examining the present communication.

8.3 The Committee notes the State party's argument that the communication is inadmissible *ratione materiae* and manifestly unfounded since the complainant has not substantiated the existence of substantial grounds for believing that he would face a foreseeable, present, personal and real risk of harm, including torture, if he were returned to Sri Lanka. With regard to competence *ratione materiae*, the Committee notes the complainant's argument that, if returned to Sri Lanka, he would risk being detained and subjected to torture. The Committee considers that these claims may raise issues under article 3 of the Convention. Accordingly, the Committee finds the complainant's allegations under article 3 admissible *ratione materiae*. The Committee also considers that the complainant has sufficiently substantiated, for the purposes of admissibility, his claims based on article 3 of the Convention, regarding his risk of being subjected to torture and ill-treatment if returned to Sri Lanka, because of his past political activities and his relationship and collaboration with his uncle, who is a target of a hostile political campaign.

8.4 As the Committee finds no obstacles to admissibility, it declares the communication admissible and proceeds with its consideration of the merits.

### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

9.2 In the present case, the issue before the Committee is whether the forced removal of the complainant to Sri Lanka would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant was personally in danger of being subjected to torture upon return to Sri Lanka. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In this context, the Committee refers to its consideration of the fifth periodic report of Sri Lanka,<sup>4</sup> during which it had voiced serious concerns about reports suggesting that abductions, torture and ill-treatment perpetrated by State security forces in Sri Lanka, including by the police, had continued in many parts of the country after the conflict with the Liberation Tigers of Tamil Eelam had ended in May 2009.<sup>5</sup> However, the Committee recalls that the aim of the evaluation undertaken in the context of individual complaints is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger

<sup>4</sup> CAT/C/LKA/CO/5, paras. 9–12.

<sup>5</sup> CAT/C/LKA/CO/3-4, para. 6.

of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.<sup>6</sup>

9.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the Committee will assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his or her deportation. Indications of personal risk may include, but are not limited to: (a) the complainant’s ethnic background; (b) political affiliation or political activities of the complainant or his or her family members; (c) arrest or detention without guarantee of a fair treatment and trial; (d) sentence in absentia; and (e) previous torture (para. 45). With respect to the merits of a communication submitted under article 22 of the Convention, the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real (para. 38).<sup>7</sup> The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however, it is not bound by such findings, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).

9.5 In the present case, the complainant claims that he would face a risk of torture if returned to Sri Lanka because he was harassed, threatened, abducted and shot at by the supporters of his former political party, the United People’s Freedom Alliance, after changing his political allegiance to the United National Party in 2010. The Committee also notes the complainant’s claim that the past harassment was in fact part of a campaign by his uncle’s political rival to ruin his uncle’s career, and that he now faces an even greater risk of harm because of the death of his uncle, who would have protected him. The Committee also takes note of his contention that he is at risk of harm because of his profile as a failed asylum seeker, particularly given that he was the only Sinhalese on the boat to Australia and would be suspected of having aided the Liberation Tigers of Tamil Eelam sympathizers on the same boat to flee from Sri Lanka. The Committee is also mindful of his claims about the conduct and findings of the Refugee Review Tribunal (see para. 3.3 above).

9.6 The Committee notes, however, the State party’s submission that the complainant failed to provide credible evidence and to substantiate his allegations that there was a foreseeable, real and personal risk that he would be subjected to torture by the authorities if returned to Sri Lanka, and that his claims have been thoroughly reviewed as part of refugee status determination and complementary protection processes, in accordance with domestic legislation and taking into account the current human rights situation in Sri Lanka. The Committee also notes that the authorities of the State party considered it plausible that the complainant may have been subjected to some harassment and threats by the supporters of the United People’s Freedom Alliance, but noted that despite the alleged ill will of the Alliance and the arrest and imprisonment of political opponents during this period, the complainant had remained in Sri Lanka for two additional years, during which neither the Alliance nor any other authorities ever attempted to arrest him or even visited his home. The State party also noted that the Alliance had had every opportunity to harm him if they had intended to, given that he had frequently travelled around the country, inter alia, to visit his wife in Colombo every weekend. The authorities of the State party found that this apparent lack of interest in harming him suggested that the complainant had been of little concern to the Alliance or protected by his family connections. The State party also maintained that his alleged risk of harm based on his relationship with his uncle did not establish a personal risk of harm upon return and that that risk no longer existed, as the uncle, allegedly the actual target of the harassment, had died in April 2018.

9.7 In the present communication, the Committee observes that the State party’s authorities considered the complainant’s statements and evidence as well as country information, but did not accept many of his accounts regarding his past political activities and subsequent harassment and attacks for being inconsistent, lacking in details and not

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<sup>6</sup> See *S.P.A. v. Canada* (CAT/C/37/D/282/2005), *T.I. v. Canada* (CAT/C/45/D/333/2007) and *A.M.A. v. Switzerland* (CAT/C/45/D/344/2008).

<sup>7</sup> *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.



being credible. Taking into account the lack of information demonstrating the continued interest of Sri Lankan authorities in him, and his political inactivity since 2012, the State party's authorities concluded that the complainant would not risk being tortured for his political activities upon return. Furthermore, the Committee notes the State party's finding that the complainant has failed to substantiate a personal risk of being tortured based on his relationship with his uncle and that it is reasonable to conclude that this alleged risk of harm has ceased to exist because of the uncle's recent death. As regards this conclusion, the Committee notes that the complainant has not provided sufficient explanations as to why the uncle's political rival had specifically targeted him and would continue to harm him even after the uncle's death. Regarding the alleged risk because of his profile as a failed asylum seeker, the Committee observes that the State party's authorities considered the possible risk of ill-treatment of failed asylum seekers upon return to Sri Lanka, but did not accept that he would be suspected of supporting the Liberation Tigers of Tamil Eelam, although he might be subjected to some scrutiny upon arrival. The Committee also observes that the State party's authorities took note of the complainant's own statement that such suspicion was unlikely given his Sinhalese ethnicity and consistent support for the Sinhalese nationalist parties. In the light of the foregoing, the Committee is of the view that the State party's authorities gave appropriate consideration to the complainant's claims.

9.8 With regard to the complainant's claim that the Refugee Review Tribunal dismissed his concern about confidentiality, the Committee recalls its general comment No. 4, in which it states that each case should be examined individually, impartially and independently by the State party through competent administrative and/or judicial authorities, in conformity with essential procedural safeguards, notably the guarantee of a prompt and transparent process, a review of the deportation decision and a suspensive effect of the appeal (para. 13). In the present case, the Committee notes that, while alleging that he did not trust the Tribunal's confidentiality procedures despite its assurances, the complainant has not shown how the Tribunal's detailed assessment of his application was affected by a lack of independence or impartiality, or that the assessment in question was clearly arbitrary, unfair or amounted to a denial of justice for him.

10. In the light of the considerations above, and on the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in Sri Lanka, the Committee considers that, in the present case, the complainant has not discharged the burden of proof to demonstrate that his return to Sri Lanka would entail a violation of article 3 of the Convention.<sup>8</sup> Furthermore, the complainant has not demonstrated that the authorities of the State party failed to conduct a proper investigation into his allegations.

11. The Committee therefore concludes that the complainant has not adduced sufficient grounds to enable it to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon his return to Sri Lanka.

12. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Sri Lanka by the State party would not constitute a violation of article 3 of the Convention.

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<sup>8</sup> General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 38.